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PROCEEDINGS

MR. CURRAN: Clearly one of the issues -- we have Walsh on for Monday. One of the issues we talked about before is I want all the documents before. I don't want to have to keep dragging him back here three, four times. And you indicated you need one more full day. But one of the issues I said last time, and you agreed, we need the documents that were marked as exhibits in

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<p>5</p> <p>1 this matter at trial and at Motion For New Trial that are</p> <p>2 in the custody of the Attorney General's office. I</p> <p>3 prefer, and we can talk about it after this depo, that we</p> <p>4 have all those records before we bring Walsh in.</p> <p>5 MR. REILLY: We can talk about it. I will</p> <p>6 send a request to Mr. Roache this afternoon or tomorrow</p> <p>7 morning. And given the deadlines that we're all under,</p> <p>8 you know, we'll request as prompt a turnaround as we can</p> <p>9 on those issues.</p> <p>10 MS. SCAPICCHIO: We haven't heard anything on</p> <p>11 the AG's response?</p> <p>12 MR. REILLY: No. I'll also call him. Those</p> <p>13 were promised last week.</p> <p>14 MR. CURRAN: Couldn't have been clearer on my</p> <p>15 position.</p> <p>16 MR. REILLY: The AG's position was very clear</p> <p>17 which was, yes, you're entitled to them, I'll produce</p> <p>18 them. It hasn't happened yet. That was ten days ago.</p> <p>19 MR. CURRAN: If we can talk afterwards, too,</p> <p>20 about the practical aspect of the looming scheduling</p> <p>21 deadline.</p> <p>22 MR. WHITE: We have a deadline day of</p> <p>23 December the 8th?</p> <p>24 MR. CURRAN: 6th.</p>	<p>7</p> <p>1 A I live with my wife.</p> <p>2 Q And are you employed?</p> <p>3 A Not anymore.</p> <p>4 Q And you're retired from the Boston Police Department?</p> <p>5 A Yes.</p> <p>6 Q When did you start with the Boston Police Department?</p> <p>7 A In November of 1951.</p> <p>8 Q And did you start as a patrolman?</p> <p>9 A Yes.</p> <p>10 Q And how long were you a patrolman?</p> <p>11 A Probably around ten years.</p> <p>12 Q And what was the next job you had?</p> <p>13 A I was a sergeant.</p> <p>14 Q And where were you a sergeant?</p> <p>15 A I was a sergeant in Brighton, Station 14, and then I went</p> <p>16 to Station 1 in the North End. Then I went to District</p> <p>17 11 in Dorchester. And at some point there, I made</p> <p>18 sergeant. I'm not quite sure of the date, but I'm going</p> <p>19 to guess '61 -- maybe '61 or '62 I made sergeant, and</p> <p>20 that's when I went to 11 when I made sergeant. I'm not</p> <p>21 quite sure of the scenario.</p> <p>22 Q What was the next rank you had after sergeant?</p> <p>23 A Lieutenant.</p> <p>24 Q When was that?</p>
<p>6</p> <p>1 MR. REILLY: What's a couple of days between</p> <p>2 friends.</p> <p>3 MR. WHITE: We're a little behind on</p> <p>4 completing all the depositions.</p> <p>5 MR. REILLY: We can talk about that, but</p> <p>6 let's get Mr. Daley out of here.</p> <p>7 THE WITNESS: I might ask you to speak a</p> <p>8 little louder.</p> <p>9 JOHN DALEY,</p> <p>10 a witness called for examination, having been</p> <p>11 satisfactorily identified through proper identification</p> <p>12 and through a Notary Public having duly sworn or affirmed</p> <p>13 to tell the truth, testified as follows:</p> <p>14</p> <p>15 DIRECT EXAMINATION BY MR. REILLY:</p> <p>16 Q Could you tell me your name?</p> <p>17 A John Daley.</p> <p>18 Q And where do you live, Mr. Daley?</p> <p>19 A I live at 64 Flames Road in Marshfield, Mass., 02050.</p> <p>20 Q How long have you lived there?</p> <p>21 A Probably 30 years.</p> <p>22 Q Who do you live there with?</p> <p>23 A Excuse me?</p> <p>24 Q Who do you live there with?</p>	<p>8</p> <p>1 A You know, I'm not quite sure. That would be a tough</p> <p>2 answer for me without seeing the records.</p> <p>3 Q When you became lieutenant, where were you assigned?</p> <p>4 A My first assignment was in District 3 in Mattapan.</p> <p>5 Q What was the next assignment you had as a lieutenant?</p> <p>6 A District 2.</p> <p>7 Q How about after that?</p> <p>8 A From District 2, I went to an administrative job in Staff</p> <p>9 Inspections.</p> <p>10 Q When was that that you went to the administrative job?</p> <p>11 A I would be guessing at dates, so I'm not quite sure.</p> <p>12 Q Are we in the '70s or the '80s? Where are we roughly?</p> <p>13 A I'd say in the low '80s.</p> <p>14 Q Were you still a lieutenant when you did the</p> <p>15 administrative job?</p> <p>16 A Yes.</p> <p>17 Q What was the next job you had after that?</p> <p>18 A I went to homicide. I forgot a big period of my life as</p> <p>19 a sergeant.</p> <p>20 Q Where was that?</p> <p>21 A I went to homicide, and I spent -- in 1969, and I was</p> <p>22 there until 1975.</p> <p>23 Q What rank did you have when you were in homicide at that</p> <p>24 time?</p>

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<p style="text-align: right;">9</p> <p>1 A I was a detective sergeant.</p> <p>2 Q Who was the commander of the unit then?</p> <p>3 A Edward Sherry.</p> <p>4 Q When you were a detective sergeant in the Homicide Unit,</p> <p>5 did you have any formal training in homicide</p> <p>6 investigations?</p> <p>7 A Let me see, I don't think I did.</p> <p>8 Q When was it that you became the commander of the Homicide</p> <p>9 Unit?</p> <p>10 A Once again, please?</p> <p>11 Q When did you become the commander of the Homicide Unit?</p> <p>12 A In April of 1985.</p> <p>13 Q And who did you take over from?</p> <p>14 A I don't remember.</p> <p>15 Q Did you continue -- how long did you continue as the</p> <p>16 commander from April of '85?</p> <p>17 A About three and a half years.</p> <p>18 Q And who took over from you?</p> <p>19 A Eddie McNelley.</p> <p>20 Q When did you stop as the commander of the Homicide Unit?</p> <p>21 A In August of 1989.</p> <p>22 Q Were you the head of the Homicide Unit when Tiffany Moore</p> <p>23 was murdered?</p> <p>24 A I was.</p>	<p style="text-align: right;">11</p> <p>1 Q And how did you go about arranging that?</p> <p>2 A I brought him to Boston.</p> <p>3 Q This Vernon Givens (phonetic)?</p> <p>4 A Yes.</p> <p>5 Q And how many occasions did you bring him to Boston?</p> <p>6 A I brought him once when I was there, and my memory is</p> <p>7 that everybody in homicide went to it.</p> <p>8 Q And did he run a seminar?</p> <p>9 A I suppose you could call it a seminar.</p> <p>10 Q How long a program did he run?</p> <p>11 A Maybe three days. I can't tell you.</p> <p>12 Q Was that held in Boston?</p> <p>13 A It was at a local college, but I have no memory of where</p> <p>14 it was.</p> <p>15 Q But in the local Boston area?</p> <p>16 A Yes.</p> <p>17 Q Do you remember when that was?</p> <p>18 A All I can do is make an estimate of 1988.</p> <p>19 Q All right. Did all of the members of the Homicide Unit</p> <p>20 go to that?</p> <p>21 A To my knowledge, they did.</p> <p>22 Q Did the fellow who ran that seminar give out any written</p> <p>23 materials?</p> <p>24 A He had a book.</p>
<p style="text-align: right;">10</p> <p>1 Q And how many detectives did you have in your unit in</p> <p>2 August of 1988?</p> <p>3 A The best I can do is guess. I have no memory.</p> <p>4 MR. DONNELLY: Don't guess.</p> <p>5 Q Can you give me an approximation?</p> <p>6 A Maybe 12. That really is a speculative figure.</p> <p>7 Q How were they organized?</p> <p>8 A They were organized in teams with a sergeant.</p> <p>9 Q How many in each team?</p> <p>10 A It would vary, but usually it was two with each team.</p> <p>11 Q That would be a sergeant and a detective?</p> <p>12 A A sergeant and a couple of detectives.</p> <p>13 Q As the head of the Homicide Unit, were you responsible</p> <p>14 for arranging the training of the members of your unit?</p> <p>15 A Yes.</p> <p>16 Q And in 1988 and 1989, what kind of formal training was</p> <p>17 there for homicide detectives?</p> <p>18 A There was very little -- there were no schools for</p> <p>19 homicide trainings. But there were a few people who did</p> <p>20 that stuff, and one was a lieutenant detective from New</p> <p>21 York City named Vernon -- Vernon Geberth or something</p> <p>22 like that. I'm not sure of the last name.</p> <p>23 Q And did you have your detectives trained by that fellow?</p> <p>24 A Yes.</p>	<p style="text-align: right;">12</p> <p>1 Q Do you remember the name of the book?</p> <p>2 A I can't remember the name, but it was certainly about the</p> <p>3 homicide investigation. That was the whole -- that's</p> <p>4 what the book was about.</p> <p>5 Q Did everybody who went to the seminar get a copy of the</p> <p>6 book?</p> <p>7 A I hope they did, but I don't know.</p> <p>8 Q Did you go to the seminar?</p> <p>9 A I never went to the seminar.</p> <p>10 Q Did you require that the Homicide Unit members go to the</p> <p>11 seminar?</p> <p>12 A I did.</p> <p>13 Q Do you remember any other formal homicide investigation</p> <p>14 training that was put on while you were head of the</p> <p>15 Homicide Unit?</p> <p>16 A Yes, there were other schools. I went to other schools.</p> <p>17 Q Do you remember where you went to other schools?</p> <p>18 A One was in New York with the New York State Police, and</p> <p>19 that was up in Albany or -- it was upstate New York. I'm</p> <p>20 not sure.</p> <p>21 Q Did you keep track anywhere in your records of the</p> <p>22 training that members of your unit had attended or taken?</p> <p>23 A Did I keep track of the records?</p> <p>24 THE WITNESS: Can I speak to you for a</p>

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<p>13</p> <p>1 second?</p> <p>2 MR. DONNELLY: Sure. Can we step outside for</p> <p>3 a moment?</p> <p>4 (A recess was taken at 2:18 p.m.)</p> <p>5 (Resumed at 2:20 p.m.)</p> <p>6 A Once again the question?</p> <p>7 Q Did you keep any written records concerning the training</p> <p>8 that members of your unit had?</p> <p>9 A We just talked about it a second ago.</p> <p>10 MR. DONNELLY: If you don't understand the</p> <p>11 question, you can ask him to repeat it.</p> <p>12 A I think I understand the question. I didn't keep any</p> <p>13 records in homicide of the training they got.</p> <p>14 Q Were there records kept somewhere?</p> <p>15 A I don't think so. I don't know. I don't think so.</p> <p>16 Q Was there any way for you to find out what training one</p> <p>17 of your members had had? How would you go about doing</p> <p>18 that if you wanted to find that out?</p> <p>19 A I don't think there would be any records of any school or</p> <p>20 of any department records. I'm not aware of any</p> <p>21 department records of training.</p> <p>22 Q Was there any department regulations that required a</p> <p>23 certain amount of training for homicide detectives?</p> <p>24 A No.</p>	<p>15</p> <p>1 there was something that the case just -- the suspect</p> <p>2 couldn't be arrested for some reason, that no case could</p> <p>3 be got together against an individual. In that case, it</p> <p>4 was the exceptionally cleared.</p> <p>5 Q And did somebody keep track of clearance rates for the</p> <p>6 individual detectives in your unit?</p> <p>7 A Well, I suppose I did.</p> <p>8 Q Did you do it -- did you write it down, or did you keep</p> <p>9 track of it in your head?</p> <p>10 A Kept track of it in my head.</p> <p>11 Q You didn't have it written down anywhere?</p> <p>12 A Everything would be lumped together, but I was able to</p> <p>13 pretty carefully understand what officers had the best</p> <p>14 solution rates.</p> <p>15 Q When you said everything would be lumped together, there</p> <p>16 would be a clearance rate calculated for the whole unit?</p> <p>17 A Yes.</p> <p>18 Q But not in writing; it wasn't broken down by team or by</p> <p>19 individual?</p> <p>20 A No, no.</p> <p>21 Q It was teams that investigated the homicides, correct?</p> <p>22 A It was the team?</p> <p>23 Q Yes.</p> <p>24 A Yes.</p>
<p>14</p> <p>1 Q Was there any formal procedure for you to evaluate the</p> <p>2 work of members of your unit?</p> <p>3 A There was not a formal procedure, but it certainly was an</p> <p>4 informal one.</p> <p>5 Q We'll get to that, but I want to start with formal. Was</p> <p>6 there any formal procedure?</p> <p>7 A No.</p> <p>8 Q Did you do employee evaluations of members of your unit?</p> <p>9 A No.</p> <p>10 Q What was the informal procedure that you mentioned?</p> <p>11 A Well, one of them was how well you did on your cases. I</p> <p>12 mean if you had a pretty good clearance rate and a good</p> <p>13 conviction rate, that certainly was in your favor.</p> <p>14 Q And what's a clearance rate?</p> <p>15 A Well, a clearance rate was an FBI statistic of a handful</p> <p>16 of crimes, major crimes, and the percentage of them that</p> <p>17 were solved.</p> <p>18 Q And what constituted solving for purposes of a clearance</p> <p>19 rate?</p> <p>20 A Well, there was more than one, but one of them certainly</p> <p>21 was an arrest. Another category was exceptionally</p> <p>22 cleared.</p> <p>23 Q What does that mean "exceptionally cleared"?</p> <p>24 A It meant that there was extenuating circumstances, or</p>	<p>16</p> <p>1 Q So the clearance rate would be determined by team; is</p> <p>2 that fair?</p> <p>3 A Well, each team would contribute to the clearance rate,</p> <p>4 yes.</p> <p>5 Q And you'd be able to tell which team had a higher or a</p> <p>6 lower clearance rate than another team?</p> <p>7 MR. CURRAN: Objection.</p> <p>8 Q Would that be fair?</p> <p>9 MR. CURRAN: You can answer if you understand</p> <p>10 the question.</p> <p>11 A Repeat that again.</p> <p>12 Q You could tell from keeping track in your own mind which</p> <p>13 team had a higher or a lower clearance rate than another</p> <p>14 team?</p> <p>15 A Pretty much so.</p> <p>16 Q But that wouldn't tell you which of the members of that</p> <p>17 team was performing better or worse; would that be fair?</p> <p>18 MR. WHITE: Objection.</p> <p>19 A No. The teams were very effective. If I could say two</p> <p>20 people went out to do something and they both</p> <p>21 accomplished it, did one do more than the other? I could</p> <p>22 never --</p> <p>23 Q You wouldn't be able to tell?</p> <p>24 A No, I wouldn't be able to tell, of course not.</p>

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<p>17</p> <p>1 Q You said the other way, informal way that you could</p> <p>2 evaluate was conviction rates?</p> <p>3 A Arrest rates were one, too, and conviction rate.</p> <p>4 Q And was there any space where you kept track of</p> <p>5 conviction rates in --</p> <p>6 A Yes.</p> <p>7 Q And how did you do that?</p> <p>8 A You know, I -- I can't answer the question. I don't know</p> <p>9 how I did it.</p> <p>10 Q Did you do it in writing somewhere?</p> <p>11 A I don't know. I don't remember anyhow.</p> <p>12 Q Were there any other ways that you evaluated the</p> <p>13 performance of the members of your unit other than their</p> <p>14 arrest rates and their conviction rates?</p> <p>15 A Well, there were other ways, of course. Some people were</p> <p>16 better workers than others. Some people were more</p> <p>17 enthusiastic. Some people would volunteer to take a</p> <p>18 case. And that always would influence my judgment.</p> <p>19 Q A better worker in what sense?</p> <p>20 A Excuse me?</p> <p>21 Q You said some people were better workers. Better workers</p> <p>22 in what sense?</p> <p>23 A In all senses, they were enthusiastic and diligent.</p> <p>24 Q Were you ever asked to evaluate formally or in writing</p>	<p>19</p> <p>1 Q Do you remember the Tiffany Moore murder investigation?</p> <p>2 A I do.</p> <p>3 Q Be fair to say it was a fairly prominent case when it</p> <p>4 happened?</p> <p>5 A It was a high-profile case.</p> <p>6 Q "High-profile" was the word I was looking for, thank you.</p> <p>7 When did you first become aware of the murder?</p> <p>8 A I'm not sure of the day, but I think it may have been the</p> <p>9 next day or the day after.</p> <p>10 Q Who decided which detectives would investigate that</p> <p>11 murder?</p> <p>12 A It was decided by a schedule. It was just the schedule</p> <p>13 was set up on a weekly basis where certain detectives and</p> <p>14 detective sergeants were assigned to handle all cases</p> <p>15 that came in.</p> <p>16 Q Who were the detectives assigned to investigate Tiffany</p> <p>17 Moore?</p> <p>18 A Richie Walsh and Paul Murphy.</p> <p>19 Q At some point, did that change? Did the detectives</p> <p>20 charged with investigating this murder change?</p> <p>21 MR. CURRAN: Objection.</p> <p>22 MR. WHITE: Objection.</p> <p>23 A Will you ask that question again?</p> <p>24 Q Sure. At some point, did the detectives charged with</p>
<p>18</p> <p>1 the performance of the members of your unit?</p> <p>2 A No.</p> <p>3 Q When decisions about promotions were being made, was your</p> <p>4 opinion solicited?</p> <p>5 A No.</p> <p>6 Q Was there any procedure whereby you would review the</p> <p>7 status of ongoing investigations?</p> <p>8 A I would talk with all officers involved on every case, if</p> <p>9 that's what you're asking.</p> <p>10 Q And that would just be part of your daily routine?</p> <p>11 A Yes.</p> <p>12 Q Was there any formal procedure whereby every certain</p> <p>13 period of time or certain particular times you would sit</p> <p>14 down on open cases and review them?</p> <p>15 A There was no formal procedure, but we did it all the</p> <p>16 time.</p> <p>17 Q Were there ever meetings, full unit meetings?</p> <p>18 A Well, there weren't that many people there. And it was a</p> <p>19 small office, a small floor, and we gathered many times</p> <p>20 and talked over cases.</p> <p>21 Q As part of your day-to-day --</p> <p>22 A Yes.</p> <p>23 Q -- processing?</p> <p>24 A Yes.</p>	<p>20</p> <p>1 investigating the Tiffany Moore murder change from Walsh</p> <p>2 and Murphy to someone else?</p> <p>3 A To my knowledge?</p> <p>4 Q Yes.</p> <p>5 A No.</p> <p>6 Q Do you remember Detectives Callahan and McDonough taking</p> <p>7 over the investigation of this case?</p> <p>8 A I don't.</p> <p>9 Q It doesn't ring any bells with you?</p> <p>10 A Once again?</p> <p>11 Q It doesn't ring any bells with you?</p> <p>12 A Yeah, and I know them both.</p> <p>13 Q Did you monitor Walsh and Murphy's investigation?</p> <p>14 MR. CURRAN: Objection.</p> <p>15 MR. WHITE: Objection.</p> <p>16 A Am I expected to answer that?</p> <p>17 Q Yes.</p> <p>18 A Yes.</p> <p>19 Q And how did you go about monitoring their investigation?</p> <p>20 A I talked with them.</p> <p>21 Q How frequently did you talk to them about this case?</p> <p>22 A At least twice.</p> <p>23 Q Do you remember the details of those conversations?</p> <p>24 A I do.</p>

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<p>21</p> <p>1 Q And what do you remember them saying to you?</p> <p>2 MR. WHITE: Objection.</p> <p>3 THE WITNESS: Can I speak to you again about</p> <p>4 this?</p> <p>5 Q I let it go the first time, but you're not allowed when</p> <p>6 there's a question pending. I'm entitled to the answer.</p> <p>7 MR. CURRAN: If you recall, if you remember</p> <p>8 anything. Don't guess.</p> <p>9 MR. DONNELLY: Don't guess.</p> <p>10 A I do remember some of the conversation, yes.</p> <p>11 Q And what do you remember?</p> <p>12 A I remember talking to them either that morning or the</p> <p>13 next morning. And we talked about the case, and they had</p> <p>14 some targets. I'd have to look at the -- my own notes to</p> <p>15 be sure.</p> <p>16 Q And what notes are those?</p> <p>17 A I had some notes of the conversation with them.</p> <p>18 Q Do you have them with you now?</p> <p>19 A I do.</p> <p>20 Q Could I see them?</p> <p>21 A Sure.</p> <p>22 MR. CURRAN: Can you show them to your</p> <p>23 attorney first?</p> <p>24 THE WITNESS: It starts right here. This</p>	<p>23</p> <p>1 or any journals or any other documents.</p> <p>2 MR. REILLY: As I understand it, he has the</p> <p>3 documents with him here today. Let me just ask another</p> <p>4 question.</p> <p>5 Q (By Mr. Reilly) Did you review those documents before</p> <p>6 today's deposition?</p> <p>7 A You have to take --</p> <p>8 Q Did you review those notes before today's deposition?</p> <p>9 A Yes.</p> <p>10 MR. REILLY: I have a right to ask him --</p> <p>11 MR. DONNELLY: You have a right to ask him</p> <p>12 questions.</p> <p>13 MR. REILLY: I have a right to see the</p> <p>14 documents he reviewed. He has them with him, and he</p> <p>15 reviewed them in preparation for this deposition.</p> <p>16 MR. DONNELLY: But you did not subpoena them.</p> <p>17 MR. REILLY: But he's got them here. I don't</p> <p>18 have to. They're documents he reviewed to prepare for</p> <p>19 today's deposition, and I'm insisting on my right to have</p> <p>20 them. And frankly, I'm not going to go forward in this</p> <p>21 deposition until they're produced. He has them here.</p> <p>22 There's no need for a subpoena. He's reviewed them</p> <p>23 before today's deposition. I have a right to them.</p> <p>24 MR. DONNELLY: You can ask him questions.</p>
<p>22</p> <p>1 date is not accurate, but it starts right here</p> <p>2 (indicating).</p> <p>3 MR. DONNELLY: Can I step outside and review</p> <p>4 these with him for a moment?</p> <p>5 MS. SCAPICCHIO: I thought there was a</p> <p>6 question pending.</p> <p>7 MR. CURRAN: No question pending. I don't</p> <p>8 know if -- you can keep it on the record. You have every</p> <p>9 right to speak to your attorney. But if there's a</p> <p>10 question that was asked, you have to answer any pending</p> <p>11 question before you're allowed to speak to your attorney.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 MR. CURRAN: That's the discussion of</p> <p>14 everything going on here. But you have every right to</p> <p>15 speak to him, that's just so you know.</p> <p>16 MR. DONNELLY: Can we step outside?</p> <p>17 MR. REILLY: Yes.</p> <p>18 (A recess was taken at 2:33 p.m.)</p> <p>19 (Resumed at 2:47 p.m.)</p> <p>20 MR. DONNELLY: My understanding is you did</p> <p>21 not subpoena any records from Mr. Daley.</p> <p>22 MR. REILLY: That's correct.</p> <p>23 MR. DONNELLY: Therefore, we are not</p> <p>24 producing any of the documents that he has with him today</p>	<p>24</p> <p>1 He's here today --</p> <p>2 MR. REILLY: We're going to suspend and see</p> <p>3 the Judge. I'm not going forward -- he's here with these</p> <p>4 documents. He's reviewed these documents to prepare for</p> <p>5 today's deposition, and I have a right to them. It's a</p> <p>6 waste of time, frankly, to go forward and then come back</p> <p>7 and have me subpoena them. I'm not going to do it, and</p> <p>8 I'm entitled to them now. They're physically here in</p> <p>9 this room because I saw them in his hand. He's reviewed</p> <p>10 them. I have a right to them.</p> <p>11 MR. DONNELLY: You have not subpoenaed them.</p> <p>12 MR. REILLY: That's correct.</p> <p>13 MR. DONNELLY: That was not part of the</p> <p>14 deposition subpoena.</p> <p>15 MR. REILLY: That's correct.</p> <p>16 MR. DONNELLY: Therefore, we're not producing</p> <p>17 them. He's here today. You can ask him --</p> <p>18 MR. REILLY: He has the --</p> <p>19 MR. DONNELLY: He reviewed them prior to his</p> <p>20 deposition. You have the opportunity to ask him</p> <p>21 questions about his memory and based on what he has</p> <p>22 reviewed and his own memory.</p> <p>23 MR. REILLY: I am not going forward with the</p> <p>24 deposition if those aren't produced. We'll have to take</p>

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<p style="text-align: right;">25</p> <p>1 it up with the Judge.</p> <p>2 MR. DONNELLY: Then I'm going to object to</p> <p>3 the suspension of the deposition.</p> <p>4 MR. REILLY: All right.</p> <p>5 MR. CURRAN: Mr. Daley, you understand what's</p> <p>6 going on is a procedural issue with regards to the</p> <p>7 production of those records. And we haven't spoken. I</p> <p>8 don't know what's in the records at all to whatever</p> <p>9 extent. You are going to be -- I just suggest for</p> <p>10 everybody's benefit that those documents you have with</p> <p>11 you today be given to your counsel in the form that</p> <p>12 they're in today for him as an officer of the court to</p> <p>13 hold those documents in his possession.</p> <p>14 THE WITNESS: Who do I give them to?</p> <p>15 MR. DONNELLY: Me.</p> <p>16 MR. CURRAN: In fairness to Mr. Donnelly, the</p> <p>17 lead in the case for the City of Boston is his colleague</p> <p>18 and boss John Roache who I believe was not aware of any</p> <p>19 existence of any documents --</p> <p>20 THE WITNESS: Which is correct.</p> <p>21 MR. CURRAN: As a result in fairness to</p> <p>22 Mr. Donnelly, Mr. Roache has to make a decision as to</p> <p>23 what is done. But in order to ensure the integrity of</p> <p>24 that document, it's just -- I think it's prudent that you</p>	<p style="text-align: right;">27</p> <p>1 MR. DONNELLY: Objection.</p> <p>2 Q You can answer the question.</p> <p>3 MR. CURRAN: You're backdooring around the</p> <p>4 objection.</p> <p>5 MR. REILLY: There's no argument. I have a</p> <p>6 right to ask him what the notes say.</p> <p>7 Q What do the notes say?</p> <p>8 MS. SCAPICCHIO: He reviewed them.</p> <p>9 MR. DONNELLY: The objection stands.</p> <p>10 Q You can answer.</p> <p>11 MR. DONNELLY: You can answer the question to</p> <p>12 the best of your ability.</p> <p>13 A Without looking at the notes?</p> <p>14 MR. DONNELLY: Correct.</p> <p>15 MS. SCAPICCHIO: He can look at the notes.</p> <p>16 Q You can look at the notes if you need to refresh your</p> <p>17 memory from them.</p> <p>18 MR. DONNELLY: Why don't we have a -- why</p> <p>19 don't you -- you've already reviewed the notes. Why</p> <p>20 don't you answer the question to the best of your memory</p> <p>21 and without looking at the notes.</p> <p>22 Q You can do that.</p> <p>23 A I had a conversation with both Paul Murphy and Richie</p> <p>24 Walsh very close to the time of the Tiffany Moore case.</p>
<p style="text-align: right;">26</p> <p>1 turn it over, and obviously a copy will be made and given</p> <p>2 back to you for your purposes.</p> <p>3 THE WITNESS: I have the originals.</p> <p>4 MR. CURRAN: The other issue is, obviously in</p> <p>5 fairness to Mr. Donnelly, Mr. Roache is going to have to</p> <p>6 have conversations upon this discovery dispute which it</p> <p>7 is, a discovery dispute meaning his right to documents or</p> <p>8 not. And as a result, that will have to be discussed.</p> <p>9 They're suspending, so you will have to come back on</p> <p>10 another day.</p> <p>11 THE WITNESS: That's all right.</p> <p>12 MR. CURRAN: Do you understand that? Do you</p> <p>13 have any plans to go anywhere in the near future in the</p> <p>14 next couple of weeks? Because your deposition is going</p> <p>15 to have to be completed within the next couple of weeks.</p> <p>16 THE WITNESS: That's all right.</p> <p>17 Q (By Mr. Reilly) Let me ask you a few more questions just</p> <p>18 so the record is clear. When did you prepare those</p> <p>19 notes?</p> <p>20 A Within a day or two of the murder of Tiffany Moore.</p> <p>21 Q Back in 1988?</p> <p>22 A Yes.</p> <p>23 Q And what do the notes say?</p> <p>24 MR. CURRAN: Objection.</p>	<p style="text-align: right;">28</p> <p>1 And we talked over the case, and we talked over how the</p> <p>2 case was going. And at that time, they told me they had</p> <p>3 several suspects in mind. They hadn't made a conclusion</p> <p>4 as to who was going to be their target.</p> <p>5 Eventually they settled on Shawn Drumgold.</p> <p>6 And they amassed sufficient evidence to get an arrest</p> <p>7 warrant, and they got the arrest warrant. And they -- he</p> <p>8 was arrested, Shawn Drumgold, and my memory is on another</p> <p>9 matter that Drumgold was at court. But Murphy and Walsh</p> <p>10 were not there when he was arrested on this other matter.</p> <p>11 But they -- somehow they knew he was arrested and they --</p> <p>12 when Drumgold was arrested, the Judge called for the</p> <p>13 commander of the local station who was a Deputy Celester</p> <p>14 and instructed him that the officers should not talk to</p> <p>15 the suspect Drumgold. Murphy and Walsh were unaware of</p> <p>16 that warning, and they encountered the suspect in the</p> <p>17 I.D. section where they gave him his Miranda rights and</p> <p>18 questioned him again.</p> <p>19 Now, within a day or two after that, their</p> <p>20 actions became known, and there was a hue and cry. And I</p> <p>21 assume, and I don't know for sure, but I think the</p> <p>22 statement that he made to the two officers was</p> <p>23 suppressed. The case continued on. The case went to</p> <p>24 trial. Shawn Drumgold was found guilty. And that</p>

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<p>29</p> <p>1 scenario is the same as the one that I know of.</p> <p>2 Q You told me originally that there was two conversations</p> <p>3 you remember with Walsh and Murphy?</p> <p>4 A Yes, there were two conversation. That's correct.</p> <p>5 Q And do you have notes as to those two conversations?</p> <p>6 A I do.</p> <p>7 Q When was the first conversation?</p> <p>8 A Within two days of the murder of -- that's my best</p> <p>9 estimate, within two days of the murder of-- the second</p> <p>10 conversation was sometime afterwards, but I can't even</p> <p>11 give an approximate date.</p> <p>12 Q Was the first conversation before or after Drumgold was</p> <p>13 arrested?</p> <p>14 A It was before.</p> <p>15 Q In that conversation, did they tell you anything about</p> <p>16 any other suspects other than Drumgold?</p> <p>17 A They said they had other suspects.</p> <p>18 Q Did they say who?</p> <p>19 A No.</p> <p>20 Q Did the name Theron Davis get mentioned to you?</p> <p>21 A No.</p> <p>22 Q Apple, does that ring a bell?</p> <p>23 A No, at least I have no memory of it.</p> <p>24 Q The second conversation, was that before or after</p>	<p>31</p> <p>1 A I have.</p> <p>2 Q And do you have any other entries about Tiffany Moore?</p> <p>3 A No.</p> <p>4 Q So the only entries you have are the two conversations</p> <p>5 with Walsh and Murphy?</p> <p>6 MR. DONNELLY: Objection.</p> <p>7 Q Is that correct?</p> <p>8 A Those are the only two entries -- I'm sure I had other</p> <p>9 conversations with Murphy and Richie Walsh, but those are</p> <p>10 the only conversations I included in the journal.</p> <p>11 Q My question is did you search the journals and satisfy</p> <p>12 yourself that the only conversations in the journal</p> <p>13 having to do with the Tiffany Moore murder were those</p> <p>14 two, or were there any other conversations about Tiffany</p> <p>15 Moore in your journal or the murder of Tiffany Moore?</p> <p>16 A I got lost along the line.</p> <p>17 Q That's a confusing question. Let me try again. You have</p> <p>18 a journal of --</p> <p>19 A Yes.</p> <p>20 Q -- a lot of stuff that you did as a police officer?</p> <p>21 A A gigantic thing.</p> <p>22 MR. DONNELLY: Let him ask the question.</p> <p>23 Q And part of that journal involves two conversations you</p> <p>24 had with Walsh and Murphy about the murder of Tiffany</p>
<p>30</p> <p>1 Drumgold's arrest?</p> <p>2 A I believe it was after.</p> <p>3 Q Was it before the trial?</p> <p>4 A I don't know.</p> <p>5 Q Do you have a memory that there was a hearing, a Motion</p> <p>6 to Suppress on the statement that Walsh and Murphy --</p> <p>7 A I don't have a memory of that. That was really an</p> <p>8 assumption on my part.</p> <p>9 Q Why was it that you took written notes of those</p> <p>10 conversations?</p> <p>11 MR. DONNELLY: Objection.</p> <p>12 Q You can answer.</p> <p>13 THE WITNESS: Answer that?</p> <p>14 MR. DONNELLY: Yes.</p> <p>15 A For 30 years I kept notes. I kept -- and I kept a</p> <p>16 manuscript of my days as a policeman and what occurred in</p> <p>17 the last -- I would sometimes go two or three days</p> <p>18 without making entries, sometimes more than that. But I</p> <p>19 generally kept up-to-date on my life as a policeman</p> <p>20 through this journal.</p> <p>21 Q And where did you keep the journal?</p> <p>22 A At home.</p> <p>23 Q Have you had a chance to look through the journal to see</p> <p>24 if you have any other entries about Tiffany Moore?</p>	<p>32</p> <p>1 Moore?</p> <p>2 A Yes.</p> <p>3 Q Are there any other conversations with anyone about the</p> <p>4 murder of Tiffany Moore in that journal?</p> <p>5 A Not to my knowledge.</p> <p>6 Q Did you look?</p> <p>7 A I did.</p> <p>8 Q And the only two that you found were the two with Walsh</p> <p>9 and Murphy?</p> <p>10 A Correct.</p> <p>11 Q How did you decide what to put in the journal and what</p> <p>12 not to put in the journal?</p> <p>13 A I decided what was important to me and what somebody else</p> <p>14 might find interesting. I really had no criteria what I</p> <p>15 was going to put -- like I had no -- it was like a diary.</p> <p>16 Q When you were telling me what you remembered from reading</p> <p>17 the notes, you said that one of the things you remembered</p> <p>18 was that Walsh and Murphy did not become aware that the</p> <p>19 Judge had ordered that Drumgold not be questioned?</p> <p>20 A That's my memory.</p> <p>21 Q Who did you learn that from? Who told you that?</p> <p>22 A They did.</p> <p>23 Q Do you remember when they told you that?</p> <p>24 A It was --</p>

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<p>33</p> <p>1 MR. CURRAN: Objection.</p> <p>2 Q You can answer.</p> <p>3 A It was sometime afterwards, but I can't even estimate</p> <p>4 when.</p> <p>5 MR. REILLY: I'm going to repeat my demand</p> <p>6 for these notes. These are contemporaneous notes</p> <p>7 reviewed by this witness in preparation for his testimony</p> <p>8 today. They are here today physically in this room, and</p> <p>9 I am requesting that they be produced.</p> <p>10 MR. DONNELLY: I'm not going to produce them</p> <p>11 today. Attorney Roache hasn't seen them.</p> <p>12 MR. REILLY: But the witness has.</p> <p>13 MR. DONNELLY: Correct. However, he also has</p> <p>14 the opportunity to have advice of counsel. Attorney</p> <p>15 Roache hasn't had an opportunity to review these</p> <p>16 documents, and you did not subpoena them as part of the</p> <p>17 deposition.</p> <p>18 MR. REILLY: Then I think that the thing to</p> <p>19 do is suspend. Let me call Judge Gertner's session and</p> <p>20 see if we can get a hold of her, do a telephone</p> <p>21 conference now. We have everybody here, the witness</p> <p>22 here.</p> <p>23 MR. CURRAN: He doesn't have the lead counsel</p> <p>24 here for the City of Boston. He's going to have to</p>	<p>35</p> <p>1 MR. REILLY: We've taken a break for about an</p> <p>2 hour. Mr. Roache has had a chance to get here. And I</p> <p>3 repeat my request for the notes that the witness</p> <p>4 testified he reviewed prior to his deposition and he</p> <p>5 prepared contemporaneously in 1988.</p> <p>6 MR. CURRAN: Just for clarification, that's</p> <p>7 not what my memory of the testimony was relative to the</p> <p>8 contemporaneous. He said he sometimes would do it</p> <p>9 contemporaneous, sometimes would do it within a few days</p> <p>10 or more.</p> <p>11 MR. REILLY: Why don't we clear that up for</p> <p>12 the record.</p> <p>13 Q (By Mr. Reilly) The notes of your conversations with</p> <p>14 Welch and Murphy --</p> <p>15 MS. SCAPICCHIO: Walsh.</p> <p>16 Q -- Walsh and Murphy, how soon after your conversations</p> <p>17 with them did you prepare the notes?</p> <p>18 A I can't be sure.</p> <p>19 Q Was it within a week?</p> <p>20 A Probably within a week.</p> <p>21 MR. REILLY: I'd request the notes be</p> <p>22 produced.</p> <p>23 MR. ROACHE: Were they subpoenaed?</p> <p>24 MR. REILLY: No. They were brought to the</p>
<p>34</p> <p>1 partake in this discussion. He told you the witness is</p> <p>2 willing to come back and suspend, allow him to consult</p> <p>3 with Mr. Roache, and make a determination of this.</p> <p>4 Otherwise, we wait until John gets here from his</p> <p>5 emergency hearing that he's at in Middlesex.</p> <p>6 MS. SCAPICCHIO: Why don't we wait to see if</p> <p>7 the Judge can see us or hear us.</p> <p>8 MR. REILLY: Is John expected here?</p> <p>9 MR. DONNELLY: I am expecting him to come.</p> <p>10 He had a hearing up in Probate & Family Court in</p> <p>11 Cambridge.</p> <p>12 MR. REILLY: He mentioned that to me. Why</p> <p>13 don't we suspend at this point. Contact the Judge, see</p> <p>14 if she's available this afternoon.</p> <p>15 MS. SCAPICCHIO: You can contact John to see</p> <p>16 what time he's available.</p> <p>17 MR. DONNELLY: Why don't I contact John</p> <p>18 before you contact the Judge regarding his availability.</p> <p>19 MR. REILLY: Why don't we suspend now. You</p> <p>20 can call John, and we'll see where we are.</p> <p>21 (A recess was taken at 3:02 p.m.)</p> <p>22 (Resumed at 3:50 p.m.)</p> <p>23 (Mr. Roache joined the deposition. Mr.</p> <p>24 Donnelly was no longer at the deposition.)</p>	<p>36</p> <p>1 deposition by Mr. Daley, and he's testified he has them</p> <p>2 with him. And in fact, I've seen them.</p> <p>3 MR. ROACHE: What have you seen?</p> <p>4 MR. REILLY: The notes in his hands, and he</p> <p>5 told me those were the notes.</p> <p>6 MR. ROACHE: You saw pieces of paper. You</p> <p>7 don't know what they are.</p> <p>8 MR. REILLY: I take him at his word. He</p> <p>9 tells me those are his notes, and he says he has them.</p> <p>10 MS. SCAPICCHIO: He's under oath.</p> <p>11 MR. ROACHE: I can state for the record that</p> <p>12 the documents that he has, some of which have to do with</p> <p>13 this case, some of which don't have to do with this case.</p> <p>14 And therefore, until I have an opportunity to purge the</p> <p>15 documents of those matters that don't pertain to this</p> <p>16 case, I'm not producing anything.</p> <p>17 Q (By Mr. Reilly) The notes that were prepared by you, the</p> <p>18 conversations with Walsh and Murphy, are they in one</p> <p>19 section of the notes, or are they -- are they in one</p> <p>20 section of the notes?</p> <p>21 A Yes, they are pretty much.</p> <p>22 Q So if I took the page of the notes where the Walsh and</p> <p>23 Murphy conversations are, would that page have only Walsh</p> <p>24 and Murphy conversations?</p>

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<p style="text-align: right;">37</p> <p>1 A There were other mentions on other pages of Walsh and</p> <p>2 Murphy, too.</p> <p>3 Q But the conversations having to do with the Tiffany Moore</p> <p>4 murder, are they all on one page of your notes?</p> <p>5 A No, they're not.</p> <p>6 Q Are they on several of your notes?</p> <p>7 A Couple of pages anyhow.</p> <p>8 Q Could they be separated from your other notes?</p> <p>9 A Of course.</p> <p>10 Q If you made a copy and just copied the paragraphs just</p> <p>11 dealing with that, is that something you could do?</p> <p>12 A Sure.</p> <p>13 MR. REILLY: I request the notes be produced.</p> <p>14 MR. ROACHE: I disagree with my client. I</p> <p>15 reviewed the notes. There are materials on the pages on</p> <p>16 the notes that are unrelated to Walsh and Murphy or the</p> <p>17 Tiffany Moore investigation. Until I have an opportunity</p> <p>18 to purge the documents, notes will not be produced.</p> <p>19 MR. REILLY: Why don't we suspend the</p> <p>20 deposition.</p> <p>21 MR. ROACHE: I'm not suspending the</p> <p>22 deposition.</p> <p>23 MR. REILLY: I'm not going forward.</p> <p>24 MR. ROACHE: It's your deposition. You asked</p>	<p style="text-align: right;">39</p> <p>1 MR. REILLY: Not today, not without the</p> <p>2 notes.</p> <p>3 MR. ROACHE: Then I object to the suspension.</p> <p>4 (Whereupon, the deposition was adjourned at</p> <p>5 3:55 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">38</p> <p>1 him to be here.</p> <p>2 MR. REILLY: I'm suspending.</p> <p>3 MR. ROACHE: I object to the suspension of</p> <p>4 the deposition.</p> <p>5 MR. REILLY: We'll take it up with the Court.</p> <p>6 (Discussion off the record.)</p> <p>7 MR. ROACHE: Back on the record. Apart from</p> <p>8 the notes, do you have any other questions to ask of my</p> <p>9 client?</p> <p>10 MR. REILLY: Yes.</p> <p>11 MR. ROACHE: Ask the questions.</p> <p>12 MR. REILLY: No.</p> <p>13 MR. ROACHE: Then you don't have any other</p> <p>14 questions.</p> <p>15 MR. REILLY: I have other questions, but I</p> <p>16 want to first ask him about what I think is the most</p> <p>17 important matter in the case, and that affects all the</p> <p>18 other questions I ask. Contemporaneous conversations at</p> <p>19 the time of this murder that were written down by him</p> <p>20 within a couple of days at most are the most important</p> <p>21 keys of evidence. I'm not going to go forward with the</p> <p>22 rest of the deposition until I know what those notes say.</p> <p>23 MR. ROACHE: So you're not going to ask any</p> <p>24 more questions?</p>	<p style="text-align: right;">40</p> <p>1 Excerpt from Rule 30(e):</p> <p>2 Submission to Witness; Changes; Signing.</p> <p>3 When the testimony is fully transcribed, the</p> <p>4 deposition shall be submitted to the witness for</p> <p>5 examination and shall be read to or by him/her, unless</p> <p>6 such examination and reading are waived by the witness</p> <p>7 and by the parties. Any changes in form or substance</p> <p>8 which the witness desires to make shall be entered upon</p> <p>9 the deposition by the officer with a statement of the</p> <p>10 reasons given by the witness for making them.</p> <p>11 *****</p> <p>12 I, JOHN DALEY, have examined the above transcript of</p> <p>13 my testimony and it is true and correct to the best of my</p> <p>14 knowledge, information and belief. Any corrections are</p> <p>15 noted on the errata sheet.</p> <p>16 Signed under the pains and penalties of perjury</p> <p>17 this day of , 2006.</p> <p>18</p> <p>19 -----</p> <p>20 JOHN DALEY</p> <p>21</p> <p>22 Subscribed and sworn to before me this</p> <p>23 day of , 2006.</p> <p>24</p> <p>-----</p> <p>Notary Public</p> <p>My commission expires:</p> <p>-----</p>

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1 COMMONWEALTH OF MASSACHUSETTS
2 NORFOLK, SS.

3 I, Nancy M. Walsh, Certified Shorthand
4 Reporter/Registered Professional Reporter and Notary
5 Public duly commissioned and qualified in and for the
6 Commonwealth of Massachusetts do hereby certify that
7 there came before me on the 15th day of November, 2006
8 the person hereinbefore named, who was by me duly sworn
9 to testify to the truth of his knowledge concerning the
10 matters in controversy in this cause; that he was
11 thereupon carefully examined upon his oath and his
12 examination reduced to typewriting under my direction;
13 and that the deposition is a true and accurate record of
14 the testimony given by the witness.

15 I further certify that I am not
16 interested in the cause of this action.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my notarial seal this 24th day of
19 November, 2006.
20

21 NANCY M. WALSH, CSR/RPR
22 (#118593)

23 My commission expires:
24 October 26, 2012